

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

WAYNE NEAL REMENY,)
)
Plaintiff,)
)
v.) Case No. 3:07-0367
) Judge Echols
)
JOHN SWOR and EDWARD)
ESCAMILLA, et al.,)
)
Defendants.)

ORDER

This matter is before the Court on a Report and Recommendation (R & R) (Docket Entry No. 21) in which the Magistrate Judge recommends denying Defendants' Motions to Dismiss (Docket Entry Nos. 11 & 14). Plaintiff, proceeding pro so, also filed a "Motion to Deny Defendants' John R. Swor, Jr., Edward Escamilla, et al.'s Motion to Dismiss" (Docket Entry No. 17), which the Court construes as a response to the motions to dismiss. The R & R was issued on January 14, 2008, and no objections have been filed, even though the parties were informed in the R & R that any objections needed to be filed within ten (10) days (Docket Entry No. 21 at 2).

Where, as here, no objections are made to the R & R, "[t]he district judge may accept, reject, or modify the recommended decision, receive further evidence, or recommit the matter to the magistrate judge with instructions." Fed.R.Civ.P. 72(b). Having carefully reviewed the entire record in this case, the Court finds that the Magistrate Judge correctly concluded that dismissal of

this excessive force action for being filed outside the statute of limitation is not warranted. Plaintiff submitted his Application to Proceed In Forma Pauperis and Complaint within one year of the alleged use of excessive force, even though that Application was not ruled upon until after the one year period had run.

Accordingly, the Court rules as follows:

(1) The Report and Recommendation (Docket Entry No. 21) is hereby ACCEPTED;

(2) Defendant John Swor's Motion to Dismiss (Docket Entry No. 11) is hereby DENIED; and

(3) Defendant Edward Escamilla's Motion to Dismiss (Docket Entry No. 14) is hereby DENIED.

This case is hereby returned to the Magistrate Judge for further proceedings pursuant to Rule 72(a) and (b) of the Federal Rules of Civil Procedure and 28 U.S.C. § 636(b)(1)(A) and (B).

It is so ORDERED.



ROBERT L. ECHOLS
UNITED STATES DISTRICT JUDGE